

Elections—Ballots—Stickers.

The voter must personally mark an X before the name printed on a sticker attached to a ballot. Stickers containing an X already printed thereon cannot legally be counted as a vote on an official ballot.

August 3, 1928.

E. F. Harmon, Esq.,
County Clerk and Recorder,
White Sulphur Springs, Montana.

My dear Mr. Harmon:

You have requested my opinion whether it is legal to use upon an election ballot a sticker bearing the printed name of a candidate and a printed X already placed in the square before the name of the candidate.

As far as I am able to ascertain, this question has never been passed upon by our supreme court.

In the case of Carwile vs. Jones, 38 Mont. 590, however, the supreme court laid down the rule that the voter must express his intention **substantially as indicated by the statute.**

The statute (section 696 R. C. M. 1921) reads in part as follows:

“He (the voter) shall prepare his ballot by **marking an ‘X’** in the square before the name of the person or persons for whom he intends to vote. * * * The elector may write in the blank space, or paste over any other name the name of any

person for whom he wishes to vote, and vote for such person by marking an 'X' before such name." (Bold type is ours.)

It will be observed that the above statute authorizes the use of so-called "stickers," but expressly states that the voter must mark an "X" before the name of the person for whom he desires to vote. In my opinion, it is necessary for the voter to personally mark an "X" before a name on a sticker, just as it is necessary for him to make such mark before the name of any candidate whose name is printed upon the official ballot.

It is therefore my conclusion that stickers such as contain an "X" already printed thereon may not legally be counted as a vote upon an official ballot.

Very truly yours,

L. A. FOOT,
Attorney General.